Supreme Court, U. S.
FILED
AUG 11 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1633

ANHEUSER-BUSCH, INC.,

Petitioner,

v.

TEAMSTERS LOCAL No. 633, NATIONAL CONFERENCE OF BREWERY AND SOFT DRINK WORKERS, SOCRATES MAKRIS, STEVEN J. McCULLOUGH, FRANK SEBAN,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

I. PHILIP SIPSER
Attorney for Respondents
380 Madison Avenue
New York, New York 10017

Of Counsel:
SIPSER, WEINSTOCK, HARPER & DORN

August 8, 1975

511 Fed 1097
88 LRRM 2785

TABLE OF CONTENTS

	PAGE
Questions Presented	1
Statement of the Case	2
Statement of Facts	2
The Decision of the Court of Appeals	3
ARGUMENT:	
The Decision Of The Court of Appeals Is Consistent With The Supreme Court's Decision In *Boys Markets,* As The Limited Exception To The Norris-LaGuardia Act Therein Enunciated Is Inapplicable Here	4
A. The Court of Appeals Properly Denied Injunctive Relief To An Employer Which Engaged In Self-Help Rather Than Invoke The Arbitration Provisions Of Its Collective Bargaining Agreement	4
B. The Requirement That Ordinary Principles Of Equity Apply In Any Application For An Injunction Is Fully Consistent With *Boys Markets*	6
CONCLUSION	7

Table of Authorities

CASES:	
Boys Markets, Inc. v. *Retail Clerks Union Local 770,* 398 U.S. 235 (1970)	3
Detroit Newspaper Publishers Ass'n. v. *Detroit Typographical Union 18,* 471, F.2d 872 (6th Cir. 1972) cert. denied, 411 U.S. 967 (1973)	6
North American Coal Corp. v. *Local 2262,* 497 F.2d 459 (6th Cir. 1974)	6
Pittsburgh Newspaper Printing Pressmen's Union No. 9 v. *Pittsburgh Press Co.,* 479 F.2d 607 (3rd Cir. 1973)	6

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Respondents Teamsters Local No. 633 ("Local 633"), National Conference of Brewery and Soft Drink Workers, Socrates Makris, Steven J. McCullough, and Frank Seban, submit this brief in opposition to the petition for a Writ of Certiorari filed by Anheuser-Busch, Inc. ("the Company").

Questions Presented

1. Did the Court of Appeals properly rule that an employer does not qualify for injunctive relief when in response to infractions of its rules by certain employees, it engages in self-help rather than arbitrate the disputed issue?

2. Did the Court of Appeals properly rule that ordinary rules of equity must apply on the employer's application for an injunction, and that its failure to demonstrate any irreparable injury must result in a denial of its application?

Statement of the Case

"This tempest has been brewed in a very small teapot." This opening sentence of the opinion of the Court of Appeals perhaps best summarizes the stature of this dispute. Certainly, this is not a case which merits the intervention of the Supreme Court. The case involves neither an important question of federal law, nor as the argument below will demonstrate, is the decision of the Court of Appeals in conflict with a decision of any other Court of Appeals or of the Supreme Court.

Statement of Facts

The Company's brief omits the following material facts.

For some three years prior to the dispute, the Company's employees at its Merrimack, New Hampshire brewery had been wearing tank-top shirts. Tank-top shirts are sleeveless and leave the wearer's arms exposed.

On July 30, 1974, during the mid-term of the collective bargaining agreement between respondent Local 633 and the Company, the Company posted a notice that it would thenceforth ban the wearing of tank-tops at the plant. At no time prior to the posting of the notice did the Company advise the Union of the ban or offer to discuss the matter with it.

On July 30 and in the ensuing few days, a number of employees reported to work wearing tank tops. Rather

than resort to the grievance and arbitration provision of the parties' contract, the Company sent the employees home and suspended them. The result was that the Company caused interference with its own operations. The Company then, on August 14, 1974, went to the District Court to enjoin the employees from wearing tank tops and to secure relief from its self imposed disruption of its operations. The District Court improvidently issued a preliminary injunction. The Court of Appeals for the First Circuit, reversed.

The Decision of the Court of Appeals

The Circuit Court, in a well-reasoned opinion found that the limited incursion upon the Norris-LaGuardia Act permitted by the Supreme Court in *Boys Markets, Inc.* v. *Retail Clerks Union Local 770,* 398 U.S. 235 (1970), could not support the injunction issued below. The Circuit Court held that an employer "cannot be permitted to qualify for injunctive relief simply by responding to minor employee infractions in a way that brings serious and irreparable damage upon himself by causing a shutdown" as happened here.

The Court of Appeals then found, as did the District Court, that the real controversy was "whether the employees shall be allowed to wear tank-top shirts pending submission of the dispute to arbitration". From this perspective, the Circuit Court properly ruled that an injunction was not warranted as "the appellee's expected injury cannot be said to be irreparable or one which outweighs the loss which the Union was likely to suffer through the issuance of an injunction".

ARGUMENT

The Decision Of The Court of Appeals Is Consistent With The Supreme Court's Decision In *Boys Markets*, As The Limited Exception To The Norris-LaGuardia Act Therein Enunciated Is Inapplicable Here.

Introduction

There is little need for extensive argument as the opinion of the Court of Appeals meticulously sets forth the facts and issues, and thoroughly documents the law. Contrary to the assertions of the Company, the Court of Appeals' decision is wholly consistent with *Boys Markets* and will further promote and effectuate the peaceful resolution of labor disputes through arbitration.

A. The Court of Appeals Properly Denied Injunctive Relief To An Employer Which Engaged In Self-Help Rather Than Invoke The Arbitration Provisions Of Its Collective Bargaining Agreement.

In its decision in *Boys Markets, supra,* the United States Supreme Court carved a single limited exception to the Norris-LaGuardia Act, in order to accommodate national labor policy favoring arbitration of labor disputes. The requirements necessary to meet the *Boys Markets* exception are not present in the instant case. As this Court stated:

> "Our holding in the present case is a narrow one. *We do not undermine the vitality of the Norris-LaGuardia Act.*" 398 U.S. at 253 (Emphasis added).

The entire thrust of the *Boys Markets* decision was the vindication of the arbitral process, by preventing parties to collective bargaining agreements from engaging in self-help when arbitration is available under their contract. *Boys Markets* sought to promote industrial peace and further the process of arbitration by allowing courts to enjoin a party to an agreement from engagaing in self-help remedies, rather than seeking relief through arbitration. As this Court stated in *Boys Markets:*

> "Indeed, the very purpose of arbitration procedures is to provide a mechanism for the expeditious settlement of industrial disputes without resort to strikes, lockouts, or other *self-help measures.* This basic purpose is obviously largely undercut if there is no immediate, effective remedy for those very tactics that arbitration is designed to obviate." 398 U.S. at 249 (Emphasis added).

Hence, if any injunctive relief were available, it would have been to restrain the Company, which sought to "lockout" its employees and engage in self-help remedies rather than to arbitrate.

Prior to instituting the action in the District Court, the Company had two full weeks from July 30 until August 14 in which it could have submitted the issue to arbitration rather than engage in self-help activity. Indeed, as the Company alleges in its complaint, resort to the grievance arbitration procedure is open to both parties and is made mandatory whenever a grievance arises.

The Company sought to enjoin what it alleged was a disruption of its operations, a condition of its own making, such disruptions being occasioned by the suspensions it imposed on its workers. The employees had not voluntarily left the plant. They were sent home and suspended.

As both the District Court and Court of Appeals found, the case at hand involves no strike action. If the Company

wanted its plant to operate with a full complement of employees, all it need have done, was to permit its employees to return, and arbitrate the issue (i.e. "work now, grieve later," as the Company advocates in its petition herein).

B. The Requirement That Ordinary Principles Of Equity Apply In Any Application For An Injunction Is Fully Consistent With Boys Markets.

The Court of Appeals' reliance on ordinary principles of equity is fully in accord with the decision in *Boys Markets*. That decision reads:

> "Nor does it follow from what we have said that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance. . . . '[T]he Distict Court must . . . consider whether issuance of an injunction would be warranted under ordinary principles of equity. . . .' " 398 U.S. at 253, 354.

The Court's conclusion that the failure of the Company to demonstrate irreparable injury was a sufficient basis for denying an injunction, is not only supported by *Boys Markets* but by every other Court of Appeals' decision which has considered this issue. See *Detroit Newspaper Publishers Ass'n.* v. *Detroit Typographical Union 18,* 471 F.2d 872 (6th Cir. 1972) cert. denied, 411 U.S. 967 (1973); *North American Coal Corp.* v. *Local 2262,* 497 F.2d 459 (6th Cir. 1974); *Pittsburgh Newspaper Printing Pressmen's Union No. 9* v. *Pittsburgh Press Co.,* 479 F.2d 607 (3rd Cir. 1973).

It stretches the limits of rational thought to understand the Company's basis for its application, i.e., that the suspensions disrupted its operations, when all it needed to do

to have a full work force and normal operations was to allow its employees to work, as they desired to do. However, as the Court of Appeals properly determined, the Company must live with the consequences of its action and may not secure the drastic remedy of a federal court injunction to enforce a work rule.

Contrary to the Company's position, the decision of the Court of Appeals will promote the intentions of *Boys Markets* by inducing employers to utilize the arbitration process rather than to engage in self-help.

The record makes clear that the Union was at all times willing to arbitrate the tank-top dispute, and such a course of action would fully dispose of this tempest in a "very small teapot".

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

I. Philip Sipser
Attorney for Respondents

Of Counsel:

Sipser, Weinstock, Harper & Dorn